No. 85-1626

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

CHARLES GOODMAN, RAMON L. MIDDLETON, ROMULUS C. JONES, JR., LYMAS L. WINFIELD, and UNITED POLITICAL ACTION COMMITTEE OF CHESTER COUNTY, DAVID DANTZLER, JR., JOHN R. HICKS, III, DOCK L. MEEKS, individually and on behalf of all others similarly situated,

Petitioners,

v.

LUKENS STEEL COMPANY, UNITED STEELWORKERS OF AMERICA (AFL-CIO-CLC), LOCAL 1165, UNITED STEELWORKERS OF AMERICA (AFL-CIO-CLC), and LOCAL 2295, UNITED STEELWORKERS OF AMERICA (AFL-CIO-CLC),

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF IN OPPOSITION FOR UNION RESPONDENTS

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Whether actions brought under the Civil Rights Act of 1866, 42 U.S.C. § 1981, are properly characterized for statute of limitations purposes following *Wilson v. Garcia*, —— U.S. ——, 105 S. Ct. 1938 (1985), as actions to recover damages for injuries to the person.

2. Whether the court of appeals properly gave retrospective application of the holding of *Wilson v. Garcia* to an action that had been filed at a time when, according to the court of appeals, there was no established precedent on which a litigant could reasonably rely for a longer statute of limitations.

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BRIEF IN OPPOSITION FOR UNION RESPONDENTS

The union respondents—United Steelworkers of America, AFL-CIO-CLC, and its local unions 1165 and 2295—respectfully submit this brief in opposition to the petition for certiorari.[1]

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[1] The caption of the petition erroneously uses the name "International Steelworkers of America." There is no such organization. The international union that is party to the proceedings below is the United Steelworkers of America, AFL-CIO-CLC. We have corrected the caption in this brief accordingly.

ARGUMENT

Neither of the questions presented in the petition for certiorari warrants review by this Court. There is no conflict among the circuits on the issues presented, nor does the petition meet any of the other criteria set by Supreme Court Rule 17 for granting the writ of certiorari.

I. APPLICATION OF *WILSON v. GARCIA* TO ACTIONS UNDER THE CIVIL RIGHTS ACT OF 1866

The court of appeals ruled that under the principles stated in this Court's decision in *Wilson v. Garcia*, —— U.S. ——, 105 S. Ct. 1938 (1985), actions under the Civil Rights Act of 1866, 42 U.S.C. § 1981—like those under the Civil Rights Act of 1871, 42 U.S.C. § 1983—should be uniformly characterized for statute of limitations purposes as actions to recover damages for injury to the person. (Pet. App. A7-A13). Petitioners do not contend that there is a conflict among the circuits on this issue, and there is none. The Third Circuit is the only court of appeals to date that has decided how *Wilson v. Garcia* should apply to claims filed under Section 1981.[2]

[2] Subsequent to the decision that is the subject of this petition for certiorari, the Third Circuit addressed the same issue in *Al-Khazraji v. St. Francis College*, 784 F.2d 505 (3d Cir. 1986), discussed *infra* at 6. The Tenth Circuit held, following its own decision in *Garcia v. Wilson*, 731 F.2d 640 (10th Cir. 1984), but prior to this Court's decision in the same case, that Section 1981 claims, like Section 1983 claims, should uniformly be characterized as actions for personal injury. *EEOC v. Gaddis*, 733 F.2d 1373, 1377 (10th Cir. 1984). And the Fifth Circuit reached a consistent conclusion in *Taylor v. Bunge Corp.*, 39 F.E.P. Cas. 265 (5th Cir. 1985), although without citing *Wilson*. The court held simply that a Section 1981 claim "is best characterized as a tort under Louisiana law." *Id.* at 265.

In a very recent case, the Ninth Circuit declined to decide how *Wilson* affects Section 1981 claims, holding that even if *Wilson* were to require use of a personal-injury statute of limitations, the decision would not be applied to that particular case. *Jones v. Bechtel*, 40 F.E.P. Cas. 1067 (9th Cir. 1986), discussed *infra*, at 7.

Petitioners suggest that this issue is "likely to arise in many Section 1981 cases" (Pet. at 18), but the number of such cases in the year since *Wilson* was decided is quite small. Only three reported district court decisions outside the Third Circuit have addressed this issue.[3]

Because there is no conflict among the circuits and no other pressing need to resolve the question, the issue does not warrant this Court's attention.

Moreover, the Third Circuit's resolution of this issue is fully supported by the principles this Court announced in *Wilson v. Garcia*. Petitioners concede that for purposes of selecting statutes of limitations, Section 1981, like Section 1983, should be given a uniform characterization as a matter of federal law. (Pet. at 9.) The only aspect of the court of appeals' decision that petitioners challenge is the conclusion that claims under Section 1981, like those under Section 1983, should be uniformly characterized as actions to recover for personal injury. (*Id.*)

Petitioners argue that the interests protected by Section 1981 are more economic than personal. The court of appeals correctly observed, however, that Section 1981 was enacted to enforce the Thirteenth Amendment and that "[i]t is difficult to imagine a more fundamental injury to the individual rights of the person than the evil that comes within the scope of that amendment." (Pet. App. A11). This Court's decisions also trace Section 1981 to the same history and concerns that led to the enactment of Section 1983. As the Court explained in

[3] Those decisions are: *Pender v. National Railroad Passenger Corp.*, 625 F. Supp. 252, 254-55 (D.D.C. 1985) (holding that Section 1981 actions are most analogous to breach of contract, employment grievances, and public accommodation complaints); *Saldivar v. Cadena*, 622 F. Supp. 949, 956-58 (W.D. Wis. 1985) (holding that Section 1981 claims should be governed by the same limitations period that applies to Section 1983 claims); *Underwood v. District of Columbia Armory Bd.*, 38 F.E.P. Cas. 1713 (D.D.C. 1985) (applying limitations period found in residual statute for claims not covered by any specific statute of limitations).

Jones v. Mayer Co., 392 U.S. 409 (1968), the 1866 Act (which contained what is now Section 1981) was a response to "private outrage and atrocity" that was "daily inflicted" on blacks, *id.* at 427, including assaults and persecution, *id.* at 427-28. "It is clear that these instances of private mistreatment . . . were understood as illustrative of the evils that the Civil Rights Act of 1866 would correct," *id.* at 428 n.40. *Compare Wilson v. Garcia*, *supra*, 105 S. Ct. at 1947-48. It is therefore appropriate to apply the same statutes of limitations to both Section 1981 and Section 1983.

There is also a strong practical reason for applying the same limitations period to both statutes. Actions against public agencies for racial discrimination in housing, employment, licensing, and other activities can be brought equally under Section 1981 and Section 1983. Application of different statutes of limitations would produce the "bizarre" result of having identical causes of action against the same defendant governed by different limitations periods, depending solely on the statute that the plaintiff chooses to invoke. (Pet. App. A11-A12). The decision of the court of appeals in this case wisely avoids that result.[4]

[4] Petitioners repeatedly criticize the court of appeals for selecting a Pennsylvania statute of limitations that the Third Circuit (but no Pennsylvania court) had previously characterized as applying only to claims for "bodily personal injuries," (Pet. at 4, 7, 21-22 n.12), when a different statute provided a longer limitations period for "claims of injuries to economic rights." (*Id.* at 16-17). It should be noted, however, that the Pennsylvania statutes that were in effect at the time this suit was filed made no such clear delineation between bodily injuries and economic claims. The two key statutes, enacted in the early eighteenth century and subsequently repealed, applied respectively to suits "to recover damages for injury wrongfully done to the person, in cases where the injury does not result in death" (Pa. Stat. Ann. tit. 12 § 34), and a long laundry list of common-law causes of action (including, for example, quare clausum fregit, debt, detinue, and replevin, and actions upon the case) (Pa. Stat. Ann. tit. 12 § 31). *See* Pet. App. A178-A179.

The Third Circuit's choice between these particular archaic statutes presents no issue of significance for this Court to consider.

II. THE RETROSPECTIVE APPLICATION OF THE RULING ON THE LIMITATIONS PERIOD

The second question presented in the petition for certiorari is a challenge to the court of appeals' decision to apply its ruling on the limitations period to this case, which was pending when *Wilson v. Garcia* was decided. Petitioners contend that there is a conflict among the circuits on the question whether *Wilson v. Garcia* should thus be applied retrospectively.

The "conflict" among the circuits on this issue is not real, but illusory. In *Chevron Oil Co. v. Hudson*, 404 U.S. 97 (1971), this Court defined the standards for determining whether a ruling on limitations periods should be applied retrospectively. The key factor in making such a determination is the state of the law prior to the new ruling: whether there was earlier authority on which a litigant could have reasonably relied in deciding to postpone filing his lawsuit. *Id.* at 106-08; *see, e.g., Farmer v. Cook*, 782 F.2d 780, 781 (8th Cir. 1986).

Prior to *Wilson v. Garcia*, the courts of appeals followed a number of different practices in selecting state statutes of limitations for actions brought under the Reconstruction Civil Rights Acts. They reached a wide variety of results.[5] The state of the law was thus different in each circuit, and in some circuits, the law was different from state to state. For that reason the *Chevron* question of reasonable reliance—whether a prospective plaintiff could reasonably postpone filing suit in reliance on prior precedent—must be determined sepa-

Apart from the general conclusion that Section 1981 claims, like Section 1983 claims, should be uniformly characterized in all states as claims to recover damages for personal injury, the Third Circuit's selection of a particular Pennsylvania statute is purely a question of local law.

[5] The Tenth Circuit summarized the key appellate cases on Section 1981 limitations along with those on Section 1983 limitations in its opinion in *Garcia v. Wilson*, 731 F.2d 640, 643-48 (10th Cir. 1984).

rarely by each circuit based on its own law as it stood before *Wilson v. Garcia*.

All that the Third Circuit has done in the instant case is to make that determination. Although its opinion on this point was brief, Pet. App. A9, A13, the Third Circuit has subsequently explained the basis for its decision. In *Al-Khazraji v. St. Francis College*, *supra*, the court observed that in 1973, when petitioners filed their complaint in the instant case, "there was no established precedent in the Third Circuit to indicate the appropriate limitations period for Section 1981 claims." 784 F.2d at 512.[6] The court explained that because there was no such precedent, a litigant in 1973 could not reasonably have relied on having a longer period of time to file suit, and retrospective application of *Wilson v. Garcia* was appropriate. *Id.* at 512-14. *See also* Pet. App. A9, A13; *Smith v. City of Pittsburgh*, 764 F.2d 188, 194-96 (3d Cir.), *cert. denied*, 106 S. Ct. 349 (1985).

By contrast, in *Al-Khazraji*, the plaintiff's Section 1981 claim had not been filed until 1980. 784 F.2d at 508. In the interim, the court of appeals had announced decisions in 1977 and 1978 that clearly established a six-year period of limitations upon which litigants could have reasonably relied. *Id.* at 512-13 & n.9. The court of appeals thus distinguished the instant case based upon the very different state of the law when the claims were filed, and held in *Al-Khazraji* that claims arising after 1977 would not be subject to the retrospective application of *Wilson v. Garcia*. *Id.* at 514.[7]

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[6] The author of the *Al-Khazraji* opinion was a member of the panel that decided the instant case.

[7] Petitioners contend that in the instant case the court of appeals "failed to perform the analysis required by *Chevron* [*Oil Co. v. Huson*]" (Pet. at 19-21). The court, however, recited that its ruling on retrospective application was based on the same reasons that it gave in *Smith v. City of Pittsburgh*, *supra*, in which it discussed *Chevron* at length and decided to apply *Wilson v. Garcia* retrospectively based on the previously unsettled state of the law and a conclusion that plaintiffs could not reasonably have relied on having a longer period in which to file Section 1983 claims. 746 F.2d at 194-97. The court's references to *Smith* in the opinion below make clear that it had the same basis for reaching a similar conclusion as to Section 1981. *See* Pet. App. A9, A13. *See also Al-Khazraji*, 784 F.2d at 512-13 & n.9.

The Ninth Circuit's decisions—which petitioners contend are in conflict with the decision below—are entirely consistent with these rulings of the Third Circuit. The Ninth Circuit in 1962 had clearly declared which statute of limitations would apply to Section 1983 claims. *Smith v. Cremins*, 308 F.2d 187 (9th Cir. 1962). The Ninth Circuit has therefore held that it will not apply *Wilson v. Garcia* retrospectively to bar Section 1983 claims that were timely under the clear precedent existing when they were filed. *Gibson v. United States*, 781 F.2d 1334, 1338-40 (9th Cir. 1986). The Ninth Circuit had similarly declared in 1980 which statute of limitations it would apply in Section 1981 cases. *See Wiltshire v. Standard Oil of California*, 652 F.2d 837, 842 (9th Cir. 1981), *cert. denied*, 455 U.S. 1034 (1982). For that reason, it recently declined to decide whether the principles of *Wilson v. Garcia* require use of a personal-injury statute of limitations in Section 1981 cases, holding that even if *Wilson* led to that result, the court would not apply it retrospectively to a claim that had been filed after the court had clearly declared that a longer limitations period applied to such claims. *Jones v. Bechtel*, 40 F.E.P. Cas. 1067 (9th Cir. 1986).

Similar considerations explain a recent Seventh Circuit case, *Anton v. Lehpamer*, 787 F.2d 1141, 1146 n.7 (7th Cir. 1986), and the Tenth Circuit's decision not to apply its own ruling in *Garcia v. Wilson* retrospectively. *See Abbitt v. Franklin*, 731 F.2d 661, 663-64 (10th Cir. 1984); *Jackson v. City of Bloomfield*, 731 F.2d 652, 653-55 (10th Cir. 1984).[8]

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[8] The same is true of virtually all of the district court opinions that have declined to apply *Wilson v. Garcia* retrospectively. Many of those cases expressly distinguish the Third Circuit's ruling in

For these reasons, there is no conflict among the circuits on any issue of law. There are only differing results based upon the application of the well-settled principles of *Chevron* to the varying state of decisional law that had previously existed in each circuit. No question is presented that warrants review by this Court.

Petitioners have drawn an analogy to the "conflict" among the courts of appeals on the question whether this Court's decision in *Del Costello v. Teamsters*, 462 U.S. 151 (1983), should be applied retrospectively to lawsuits that were filed before *Del Costello*. (Pet. at 8 n.3). In that situation, too, the courts of appeals have not disagreed over any issue of law; they have merely reached different results in the application of settled legal principles to the varying state of the decisional law that had previously existed in each circuit. Not surprisingly, this Court has denied certiorari on that issue at least eighteen times.[9]

Smith v. City of Pittsburgh, *see* note 7, *supra*, on grounds of the relative clarity of the precedents prior to *Wilson v. Garcia*. *E.g.*, *de Furgalski v. Siegel*, 618 F. Supp. 295, 298-99 (N.D. Ill. 1985); *Shorters v. City of Chicago*, 617 F. Supp. 661, 667-68 n.11 (N.D. Ill. 1985); *Cook v. City of Minneapolis*, 617 F. Supp. 461, 465-66 (D. Minn. 1985). The Seventh Circuit similarly distinguished *Smith* in *Anton v. Lehpamer*, *supra*, 787 F.2d at 1146 n.7.

[9] *Teamsters v. Edwards*, 104 S. Ct. 1599 (1984); *Local 1020 v. McNoughton*, 105 S. Ct. 291 (1984); *Rogers v. Lockheed-Georgia*, 105 S. Ct. 292 (1984); *Murray v. Branch Motor Express*, 105 S. Ct. 292 (1984); *Erkins v. Steelworkers*, 104 S. Ct. 3517 (1984); *Welyczko v. U.S. Air*, 105 S. Ct. 512 (1984); *Bedat v. McLean Trucking*, 105 S. Ct. 2325 (1985); *Glover v. United Grocers*, 105 S. Ct. 2357 (1985); *Rodman v. Hensley*, 105 S. Ct. 2020 (1985); *Freight Checkers v. Alderson*, 105 S. Ct. 3504 (1985); *Saville v. Westinghouse Elec. Corp.*, 106 S. Ct. 280 (1985); *Greyhound Lines v. Wilhite*, 106 S. Ct. 280 (1985); *Aragon v. Teamsters Local 572*, 106 S. Ct. 229 (1985); *Scaglione v. Communications Workers Local 1395*, 106 S. Ct. 251 (1985); *Taylor v. United Auto Workers Local 980*, 106 S. Ct. 849 (1986); *Mauget v. Kaiser Engineers, Inc.*, 106 S. Ct. 796 (1986); *Salisbury v. James River Corp.*, 106 S. Ct. 807 (1986); *Davis v. United Auto Workers Local 970*, 106 S. Ct. 1284 (1986).

Petitioners argue at length that the law in the Third Circuit was sufficiently clear at the time they filed their suit to support reasonable reliance on a longer statute of limitations. (Pet. at 21-24). They made this argument to the court of appeals, but that court disagreed, concluding that when this suit was filed "that law was not clear." *Al-Khazraji*, *supra*, 784 F.2d at 512 n.9. The court of appeals' rejection of petitioners' argument, based on an interpretation of local law in the Third Circuit, presents no issue warranting this Court's review.

Finally, as petitioners concede, the Pennsylvania statutes of limitations that were at issue below were repealed in 1978. (Pet. at 20). The decision below, selecting the two-year limitations period of Pa. Stat. Ann. tit. 12 § 34, thus has an extremely limited scope. It applies only to Pennsylvania cases that are governed by the repealed statutes and (because of the limited retrospective application declared in *Al-Khazraji*) in which the claims arose before 1977. That is a very narrow class of cases.

CONCLUSION

For the foregoing reasons, this Court should deny the petition for certiorari.

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